*These notes refer to the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) which received Royal Assent on 12 November 2009*

# APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

### Part 10: Schools

#### *Chapter 1: Schools causing concern: England*

655. By way of background, Part 4 of the Education and Inspections Act 2006 gives local education authorities and the Secretary of State intervention powers to tackle underperforming schools. The LEA powers consist of appointing new members to the school's governing body, establishing an interim executive board (IEB), directing the school to federate or collaborate with or seek advice from another school or other person, and suspending the school's right to a delegated budget. Before any of these powers may be exercised the school must either be in one of the Ofsted categories of requiring "special measures" or "significant improvement", or be given a warning notice by the LEA and allowed time to respond.

656. Also the Secretary of State currently has reserve powers in relation to schools requiring special measures or significant improvement. Three of these are set out alongside the LEA intervention powers, and are to appoint additional governors, to impose an IEB, and to close a school (although this last power applies to schools in special measures only). Another of the reserve powers, under section 62A of the Education Act 2002, is to require the LEA to obtain advisory services if they have a poor record or appear unlikely to be effective in eliminating the deficiencies.

#### *Section 203: Powers in relation to schools causing concern: England*

657. Section 196 introduces Schedule 13 which contains amendments to Part 4 of the Education and Inspections Act 2006.

#### *Schedule 13: Powers in relation to schools causing concern: England*

658. The Education Act 2002 gives the Secretary of State power to issue orders about teachers' pay and conditions in England and Wales - - - – see section 122 of that Act. The School Teachers' Pay and Conditions Document has been included in an order under that section.

659. Paragraph 4 of Schedule 13 to the Act inserts a new section 60A in the Education and Inspections Act 2006. The new section introduces a system of teachers' pay and conditions warning notices which allows LEAs to issue a notice to the governing body of a maintained school where the LEA are satisfied that the governing body has failed to comply, or failed to secure compliance by the head teacher, with the provisions of an order under section 122 of the 2002 Act relating to teachers' pay and conditions (including the School Teachers' Pay and Conditions Document).

660. Section 60A also provides that if a teachers' pay and conditions warning notice is given and, after a compliance period, the governing body has not complied with it or successfully made representations to the LEA against it, the school will become eligible for intervention. Some of the LEA's and the Secretary of State's current powers under Part 4 of the 2006 Act will then be available. These are:

- section 64 (power of the LEA to appoint additional governors)
- section 65 (power of LEA to provide for governing body to consist of interim executive members)
- section 66 (power of LEA to suspend right to delegated budget)
- section 67 (power of Secretary of State to appoint additional governors)
- section 69 (power of Secretary of State to provide for the governing body to consist of interim executive members).

661. Paragraph 6 of Schedule 13 to the Act amends section 64 of the Education and Inspections Act 2006 so that where a school is eligible for intervention under Part 4 of the 2006 Act an LEA's power to appoint additional governors will not be available if the Secretary of State has already appointed additional governors under section 67.

662. Paragraphs 8 and 9 of Schedule 13 amend sections 67 (power of Secretary of State to appoint additional governors) and 69 (power of Secretary of State to provide for governing body to consist of interim executive members) so that the Secretary of State's powers will also be available in a case where a school is eligible for intervention by virtue of a warning notice under section 60 (performance standards and safety) or 60A (teachers' pay and conditions). Formerly these reserve powers were available only when the school was eligible for intervention because it required significant improvement or special measures.

663. Paragraph 10 of Schedule 13 makes further provision about warning notices by inserting new sections 69A and 69B in the Education and Inspections Act 2006. Section 69A gives the Secretary of State power to direct an LEA to consider giving a performance standards and safety warning notice to a governing body school if he or she thinks that there are reasonable grounds for the LEA to do so. The Secretary of State's direction must be in writing and the LEA must provide a written response, copied to Her Majesty's Chief Inspector of Schools within 10 working days. If the LEA agree to issue a warning notice they must do so – copied to the Secretary of State – within five working days of their response to the Secretary of State and withdraw any previous warning notice given to the governing body under section 60. If the LEA decides not to issue a warning notice they must set out the reasons for the decision in their response to the Secretary of State.

664. New section 69B gives the Secretary of State a power to direct an LEA to consider giving a teachers' pay and conditions warning notice to a governing body if he or she thinks that there are reasonable grounds for the LEA to do so. The Secretary of State's direction must be in writing and the LEA must give a copy to the school's governing body, and then provide a written response (including any response from the governing body) to the Secretary of State within 10 working days. If the LEA agree to issue a warning notice they must do so — copied to the Secretary of State — within five working days of their response to the Secretary of State and withdraw any previous warning notice they had issued to the governing body under section 60A.

665. If the LEA decide not to issue a teachers' pay and conditions warning notice they must set out the reasons for the decision in their response to the Secretary of State. The Secretary of State may then direct the LEA to give a warning notice in the terms specified in the direction and to withdraw any previous warning notice they had issued to the governing body under section 60A.

### *Section 204: Power to require LEAs in England to obtain advisory services*

666. This section amends section 62A of the Education Act 2002. Section 62A currently gives the Secretary of State the power to require LEAs in England to obtain advisory services where:

- the LEA have schools in either of the categories "requiring special measures" or "requiring significant improvement", and
- the LEA do not appear to be effective or likely to be effective in improving those schools or other schools in their area which may be placed in these categories.

667. The advisory services can be supplied by an organisation, school or named person, who would provide advice to the LEA for the purposes of school improvement.

668. *Subsection (2)* inserts an additional trigger for the Secretary of State's power to require the LEA to obtain advisory services. The new trigger allows intervention when there are a disproportionate number of low-performing schools within the LEA's remit and it appears to the Secretary of State that the LEA are unlikely to improve standards in those schools or in other schools in their area which may in the future become low-performing.

669. Standards of performance of pupils at a school are assessed by reference to the matters set out in new section 62A(1C), which provides that the standards of pupils when they joined the school and the standards achieved by pupils at similar schools may be taken into account.

### *Section 205 and Schedule 14: Powers in relation to schools causing concern: Wales*

670. Section 205 gives effect to Schedule 14 which contains the Welsh provisions corresponding to those in Schedule 13 for England. The amendments are to the School Standards and Framework Act 1998, and have broadly the same effect as those made in relation to teachers' pay and conditions in England by Schedule 13, except that the Welsh Ministers rather than the Secretary of State have reserve intervention powers.